

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PATIENCE ATITO,

Plaintiff,

-against-

KHALEEL YORKE & A&Y GROUP, Inc.,

Defendants.

1:21-cv-8448-MKV

ORDER

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff commenced this action on July 15, 2021, in the Supreme Court of the State of New York, County of Bronx, by filing a Summons and Verified Complaint. [ECF No. 1-1].

Defendants were served with the Summons and Complaint on September 13, 2021, and September 27, 2021.¹ [ECF No. 1].

On October 13, 2021, Defendants removed this action to Federal Court. [ECF No. 1]. In its Notice of Removal, Defendants allege that the Court has diversity jurisdiction under 28 U.S.C. § 1332(a). [ECF No. 1].

Pursuant to 28 U.S.C. § 1446(d), “[p]romptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.” To satisfy the requirements of 28 U.S.C. § 1446(d) and confer jurisdiction over this action to the Federal Court, Defendants must: (1) file the notice of removal with the federal court; (2) provide written notice to the adverse parties; *and* (3) file a copy of the notice of removal with the appropriate state court. *See Hardman v. Bristol-Myers Squibb Co.*, No. 18-CV-11223 (ALC),

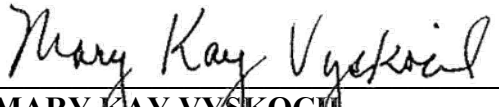
2019 WL 1714600, at *3 (S.D.N.Y. Apr. 17, 2019); *Ynoa v. Kutner*, No. 10 CIV. 5398 NRB, 2011 WL 1796320, at *1 (S.D.N.Y. May 5, 2011).

Defendants have satisfied the requirements of 28 U.S.C. § 1446(d) and have conferred jurisdiction over this action to the Federal Court. The Notice of Removal has been filed in this action. [See ECF No. 1]. Defendants have also served the Notice of Removal on Plaintiff. [ECF No. 4]. Defendants have also filed the Notice of Removal in the Supreme Court of the State of New York, County of Bronx. (See Notice of Removal, *Atito v. Yorke*, No. 809662/2021E (N.Y. Sup. Ct. 2021)). As such, this Court has jurisdiction over this action. To date, Plaintiff has not filed an appearance on the docket, moved to remand, or taken any other action to prosecute the case.

Accordingly, IT IS HEREBY ORDERED that the above-captioned action is discontinued for failure to prosecute without costs to any party and without prejudice to restoring the action to this Court's calendar if the application to restore the action is made by January 16, 2021. If no such application is made by that date, today's dismissal of the action is with prejudice. See *LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962)).

SO ORDERED.

Date: December 16, 2021
New York, NY


MARY KAY VYSKOCIL
United States District Judge